ISSUED: January 30, 2004

D.T.E. 98-57 Phase III-D

Investigation by the Department on its own motion as to the propriety of the rates and charges set forth in M.D.T.E. No. 17, filed with the Department by Verizon New England, Inc. d/b/a Verizon Massachusetts on May 5 and June 14, 2000, to become effective October 2, 2000.

ORDER DISMISSING REMAINING ISSUES

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ORDER DISMISSING REMAINING ISSUES

I. PROCEDURAL HISTORY

On September 29, 2000, the Department of Telecommunications and Energy ("Department") issued an order in D.T.E. 98-57 Phase III ("Phase III Order"), approving in part and denying in part Verizon New England, Inc. d/b/a Verizon Massachusetts' ("Verizon") proposed line sharing and digital subscriber line ("*x*DSL") tariff offerings. The Phase III Order left three remaining issues to be investigated further: (1) final collocation augmentation intervals and charges; (2) final rates for conditioning loops to carrier serving area standards; and (3) review of a hypothetical unbundled packet switching offering, which Verizon subsequently filed as an illustrative Packet Switching at Remote Terminals ("PARTS") tariff. See D.T.E. 98-57 Phase III, Procedural Memorandum at 1 (April 19, 2001). On May 18, 2001, the Department granted Verizon's motion to defer the remaining cost issues to the Department's ongoing UNE Rates Investigation, D.T.E. 01-20. On September 4, 2001, the Department granted a joint motion by Verizon and Covad Communications Company ("Covad") for entry of an order approving revisions to Verizon's Tariff M.D.T.E. No. 17 regarding collocation augmentation intervals. D.T.E. 98-57 Phase III-C at 1 (2001).

Therefore, the only remaining issues in this proceeding are the Department's review of PARTS and whether the service must be made available as an unbundled network element ("UNE"). In the Phase III Order, the Department indicated that the scope of our investigation would include whether and what extent Verizon is required to provide the means for competitive local exchange carriers ("CLECs") to offer *x*DSL services in a digital loop carrier

("DLC") environment. Phase III Order at 80. The Department stated that our investigation would proceed based upon the limited exception to the Federal Communications Commission's ("FCC") packet switching unbundling exemption promulgated in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) ("UNE Remand Order"). Phase III Order at 87.

On November 15, 2001, the Department conducted an evidentiary hearing on PARTS. At that time, Verizon argued to the Department that a PARTS rollout was only hypothetical, and that Verizon had not yet completed the steps necessary to deploy PARTS (Verizon Brief at 3-4, 21-25 (December 18, 2001)). On March 7, 2002, Verizon filed a letter with the Department indicating that it had "preliminary plans to conduct a first-office application of [a PARTS-like service] in at least one location in Massachusetts during the latter half of 2002." Therefore, the PARTS offering ceased to be hypothetical. After soliciting comments from the parties, the Department reopened the record on May 24, 2002, to take further evidence on PARTS.

Also on May 24, 2002, the United States District Court of Appeals for the District of Columbia Circuit remanded the FCC's UNE Remand Order and vacated and remanded the FCC's Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of

1996,[1] Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, FCC 99-355 (rel. Dec. 9, 1999) ("Line Sharing Order"). United States Telecom Ass'n v. FCC, 290 F.3d 415 (D.C. Cir. 2002) ("USTA"). Because the Department had stated that the FCC's rules on unbundled packet switching as promulgated in the UNE Remand Order would guide the Department's investigation in this proceeding (Phase III Order at 87-88), the Department suspended the procedural schedule and sought comments from the parties on the effect on the USTA decision on this proceeding. D.T.E. 98-57 Phase III, Hearing Officer Ruling (June 10, 2002).

After review of the parties' comments, the Department concluded that the UNE Remand Order's packet switching rules were no longer viable after USTA. D.T.E. 98-57 Phase III, Hearing Officer Ruling at 6-7 (October 18, 2002). The Department determined that in the absence of FCC rules on packet switching, as long as the Department conducted an impairment analysis consistent with USTA and consistent with the FCC's obligation to review impairment, the Department's ultimate findings would be "consistent with" and would "not

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[1] Communications Act of 1934, 47 U.S.C. §§ 151 et seq., amended by Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 86 (1996) (collectively, the "Act").

substantially prevent implementation" of 47 U.S.C. § 251, and, therefore, the FCC would not preempt the Department's findings. Id. at 7-9.[2]

Verizon appealed the October 18, 2002 Hearing Officer Ruling to the full Commission pursuant to 220 C.M.R. § 1.06(6)(d), and the Department stayed this proceeding pending review of the appeal. The Department withheld its ruling on Verizon's appeal upon the belief that the issuance of the FCC's Triennial Review Order[3] was imminent and would provide guidance for the Department's review of PARTS. Although the FCC adopted the Triennial Review Order on February 20, 2003, it did not release the order until August 21, 2003. The Department then solicited comments from the parties on whether the Department's review of PARTS is preempted by, or is otherwise inconsistent with, the Triennial Review Order and promulgated regulations. D.T.E. 98-57 Phase III, Procedural Memorandum at 1 (September 2, 2003), citing Triennial Review Order at ¶¶ 535-41 and Part VI.A.4.a.(v); 68 Fed. Reg. 52,276, 52,297 (September 2, 2003) (to be codified at 47 C.F.R.

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[2] The Department also permitted AT&T Communications of New England, Inc. ("AT&T") to submit information on its electronic loop provisioning ("ELP") proposal in this proceeding. D.T.E. 98-57 Phase III, Hearing Officer Ruling at 9 (October 18, 2002). We note that this ruling did not serve to expand the scope of review of this proceeding to include an investigation on ELP as a separate issue, but only permitted AT&T to make a showing of whether consideration of ELP is, in fact, relevant to the Department's review of PARTS. See id. This Order does not address the arguments for or against reviewing ELP, because they have no effect on our determination of whether the Department may review PARTS itself.

[3] Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98; and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 03-36 (rel. August 21, 2003) ("Triennial Review Order").

§ 51.319(a)(2)). Covad filed initial comments on October 2, 2003. Verizon and AT&T each filed initial comments on October 3, 2003. The foregoing parties each filed reply comments on October 14, 2003, as did MCI WorldCom, Inc. ("MCI"), which did not file initial comments.

II. TRIENNIAL REVIEW ORDER

The Triennial Review Order revises the FCC's unbundling rules for packet switching pursuant to 47 U.S.C. § 251. The previous rules provided that an incumbent LEC was not required to provide nondiscriminatory access to unbundled packet switching unless four specific conditions were met. See Phase III Order at 87. In the Triennial Review Order, the FCC found that competitors are not impaired without unbundled access to packet switching or to *x*DSL-capable line cards, specifically declining to permit any limited exceptions to its findings. Triennial Review Order at ¶¶ 539-40 and n.1661. The FCC also held that determining not to unbundle packet switching serves the goal of promoting the deployment of advanced services such as broadband. Id. at ¶ 540, citing 47 U.S.C. § 706.

Accordingly, the new rules provide that "[a]n incumbent LEC is not required to provide unbundled access to the packet switched features, functions and capabilities of its hybrid loops." 47 C.F.R. § 51.319(a)(2). The new rules define packet switching as

> the routing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, and the functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customer's coper loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data channels on the loops; and the ability to combine

> data units from multiple loops onto one or more trunks connecting to a packet switch or packet switches.

Id.

III. POSITIONS OF THE PARTIES

A. AT&T

AT&T asserts that Congress expressly reserved to state commissions broad authority to order unbundling or interconnection beyond the "minimum requirements" under Federal law, as long as the additional requirements are "not inconsistent" with any federal rules (AT&T Comments at 8, citing 47 U.S.C. §§ 251(d)(3), 252(e)(3), 261(c)). AT&T further asserts that the Triennial Review Order only sets a floor for unbundling and access requirements, and, therefore, argues that the Department is "free to exceed them" (id. at 8-9, citing Goodrow v. Lane Bryant, Inc., 432 Mass. 165, 170-71 (2002); In re Petition of Verizon New England, 173 Vt. 327 (2002)). Moreover, AT&T argues that the Triennial Review Order confirmed the principle that state commissions have a "parallel role to play" in determining an incumbent LEC's unbundling obligations, and that the FCC authorized state commissions "to conduct impairment proceedings under federal authority to determine the availability of specific UNEs under federal law in certain circumstances" (id. at 9-10, citing Triennial Review Order at ¶¶ 180, 188).

AT&T further argues that the FCC does not have jurisdiction to preempt state regulation of intrastate communications absent an explicit grant of authority (id. at 11, citing Louisiana Public Service Commission v. FCC, 476 U.S. 355, 360, 370 (1986) ("Louisiana

Public Service Commission"); 47 U.S.C. §§ 151, 152(b)). AT&T argues that Section 152(b)[4] establishes a dual regulatory system and "fences off" intrastate facilities from FCC regulation, and that while the FCC may limit delegation of federal regulatory authority to state commissions, it may not limit the power of the states to impose unbundling requirements "in addition to" those established by the FCC (id. at 12, citing Michigan Bell Telephone Co. v. MCIMetro Access Transmission Services, Inc., 323 F.3d 348, 358 (6th Cir. 2003) ("Michigan Bell").

Finally, AT&T claims that even if the Department does not order Verizon to offer unbundled access to packet switching, Verizon still has an obligation to offer such access on terms that are "just, reasonable, and nondiscriminatory" (id.). AT&T argues that this is an independent obligation either under Section 271(c)(2)(B) of the Act or under Massachusetts law (id. at 15).

B. Covad

Covad urges the Department to exercise its independent authority under Massachusetts law to require Verizon to provide competitors with unbundled access to PARTS (Covad Comments at 3, citing G.L. c. 159, §§ 19, 20; see also Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 3 (December 4, 1996)

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[4] Section 152(b) provides that nothing in the Act, with the exception of specified sections of the Act, are to be construed to give the FCC jurisdiction over "charges, classifications, practices, services, facilities or regulations for or in connection with intrastate communication service . . . ."

(holding that dark fiber must be provided as a UNE)).[5] Covad notes that the Act explicitly preserves independent state authority (Covad Comments at 4, citing 47 U.S.C. §§ 251(d)(3), 252(e)(3)). Covad points out that "merely an inconsistency" between state access rules and federal unbundling rules would be insufficient to create a conflict under Section 251(d)(3), but rather, such state rules would not be subject to preemption unless they "substantially prevent implementation" of Section 251 (id. at 6-7, citing Triennial Review Order at ¶¶ 192, 194).[6]

Moreover, Covad claims that, in the Triennial Review Order, the FCC did not preempt any existing state unbundling requirements or preclude the adoption of any future requirements (id. at 7; Covad Reply Comments at 2-3). Covad asserts that the Triennial Review Order "invites" parties to seek declaratory rulings from the FCC pursuant to Section 251(d)(3) of the Act to determine whether a particular state rule conflicts with federal law (Covad Comments at 8; Covad Reply Comments at 2-3). Covad maintains that because the Triennial Review Order "merely creates a process for interested parties to establish [preemption] in future proceedings before the FCC," the Department's authority to unbundle PARTS has not been preempted (Covad Reply Comments at 3 (emphasis in original)).

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[5] Covad also presents arguments pertaining to the unbundling of the high frequency portion of the local loop ("HFPL"), but because this is beyond the scope of the remaining issues this proceeding, we do not review those arguments in this Order. Moreover, Verizon has already filed tariff changes, which are now effective, eliminating line sharing, consistent with the Triennial Review Order. See Verizon Tariff M.D.T.E. No. 17, Part B, § 19.1.6(E) (effective Nov. 1, 2003).

[6] Covad also claims that state access requirements may not be preempted "as long as state regulations do not prevent a carrier from taking advantage of sections 251 and 252 of the Act . . . ." (Covad Comments at 9, citing Michigan Bell, 323 F.3d at 359).

Although the FCC stated that it would be "unlikely" to refrain from finding conflict preemption where a state required "unbundling of network elements for which the Commission has either found no impairment . . . or otherwise declined to require unbundling on a national basis," Covad stresses that the FCC merely stated that it was "unlikely," as opposed to "unable" to sustain such rules (id. at 7). Covad argues that this implies that there are "some circumstances" in which the FCC would find such rules not to be preempted (id.; see also Covad Comments at 10-11).

Covad also claims that the Department has "equal regulatory authority" with the FCC to fulfill the general goals of the Act to promote the deployment of advanced telecommunications capabilities (Covad Comments at 13).[7] Covad argues that an unbundling requirement for PARTS in Massachusetts would enhance facilities-based investment by CLECs (id. at 13). Covad also argues that Massachusetts-specific factors, such as collocation costs at remote terminals and the feasibility of competing with PARTS using copper subloops or time division multiplexing ("TDM") based services, would support a local impairment finding contrary to the FCC's national finding of no impairment (id. at 15-16; see also Covad Reply Comments at 8).

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[7] Section 706(a) of the Telecommunications Act of 1996 provides that "[t]he Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . ." Covad claims that this is a statutory directive that "applies with equal force to the state commissions as it does to the FCC" (Covad Comments at 13).

Finally, Covad claims that the Department has independent authority to enforce the unbundling requirements of Section 271 of the Act (Covad Comments at 18). Covad argues that the fact that the FCC has concluded that competitors are not entitled nationally to access packet switching facilities under Section 251 is irrelevant to the analysis of whether competitors retain the right to access unbundled loop transmission under Section 271 (id. at 21). Covad states that because Verizon must provide access under Section 271 to local loop transmission, regardless of the medium, the only issue is the appropriate price under the standards of Sections 201 and 202 of the Act (id.). Covad asserts that the Department is not precluded from applying a "forward-looking, long-run incremental cost standard" (id. at 22).

C. MCI

MCI responds to Verizon's preemption claim by arguing that the Department should continue to investigate because the FCC's interpretation of Section 251(d)(3) in the Triennial Review Order is being litigated in the courts and may not survive judicial review (MCI Reply Comments at 2-3). In response to the FCC's suggestion in the Triennial Review Order that it would be "unlikely" that preemption would not apply, MCI argues that the Department "clearly has the right to test the limits of the FCC's attempt to preempt the states," and that Verizon should have to seek a declaratory ruling from the FCC to preempt the Department's action (id. at 3). MCI argues that the Department may investigate all aspects of Verizon's services under Massachusetts law, and that if the Department were concerned about "unfair competitive advantages in the broadband market," the Department could "invite Verizon to make voluntary commitments to provide and unbundle PARTS as well as provide line sharing"

as a condition of allowing Verizon to continue to offer services under alternative regulation (id. at 4). Finally, MCI notes that Verizon is obligated to provide wholesale access to fiber-fed loops under Section 271 (id.).

D. Verizon

Verizon argues that the FCC has preempted the Department from requiring Verizon to provide or unbundle a PARTS offering. Verizon states that, in the Triennial Review Order, the FCC found on a national basis that competitors are not impaired without access to packet switching (Verizon Comments at 4, citing Triennial Review Order at ¶ 537). Verizon argues that the FCC's new rules do not require incumbent LECs to unbundle a transmission path over hybrid loops to transmit packetized information, or to unbundle electronics or other equipment used to transmit packetized information over hybrid loops, including *x*DSL-capable line cards (id. at 5, citing Triennial Review Order at ¶¶ 288-89, 541).[8]

Verizon maintains that the FCC did not delegate to the states any role in determining whether broadband facilities should be unbundled, and that the FCC expressly "limit[ed] the states' delegated authority to the specific areas and network elements identified in the [Triennial Review Order]" (id. at 7, citing Triennial Review Order at ¶ 189). Further, Verizon maintains that the FCC rejected arguments by some carriers that "states may any impose unbundling framework they deem proper under state law, without regard to the federal

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[8] Verizon states that CLECs are entitled to the copper subloop portion of a fiber-fed loop, but are not entitled to access the fiber-feeder portion of the hybrid loop, except to the extent necessary to provision high-capacity, TDM-based loops (Verizon Comments at 5, citing Triennial Review Order at ¶ 253).

regime" (id., citing Triennial Review Order at ¶ 192). Verizon also notes that the FCC eliminated the provisions of 47 C.F.R. § 51.317 that previously permitted states to create additional UNEs (id. at 7 n.7).

Verizon states that state authority preserved by the Act under the savings provision of Section 251(d)(3) is narrow and "limited to state unbundling actions that are consistent with the requirements of section 251 and do not 'substantially prevent' the implementation of the federal regulatory regime" (id. at 7, citing Triennial Review Order at ¶ 193).[9] Verizon emphasizes that the FCC opined that if a state requires unbundling of a network element, where the FCC has either found no impairment or otherwise declined to require unbundling on a national basis, it would be "unlikely that such decision would fail to conflict with and 'substantially prevent' implementation of the federal regime, in violation of section 251(d)(3)(C)" (id. at 8, citing Triennial Review Order at ¶ 195).

Finally, Verizon argues that the fact that state regulations may share a "common goal" with federal law does not overcome FCC preemption where the conflict is over the methods of achieving the common goal (id. at 9, citing Crosby v. National Foreign Trade Council, 530 U.S. 363, 379 (2000); Geier v. American Honda Motor Company, 529, U.S. 861, 869 (2000); Wisconsin Bell, Inc. v. Bie, 340 F.3d 441, 445 (7th Cir. 2003)). Verizon distinguishes Michigan Bell as determining that the state regulation involved did not "substantially prevent

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[9] Moreover, Verizon reiterates its previous argument that jurisdiction is determined by the "end-to-end" nature of the communication, and therefore, because PARTS will be used primarily to connect to packet-switched, internet traffic, which is "predominantly interstate for jurisdictional purposes," PARTS is an interstate offering (Verizon Reply Comments at 9).

implementation" of the federal regime, and argues that the decision does not support the proposition that states may unbundle additional UNEs "as long as the regulations do not interfere with the ability of new entrants to obtain services" (Verizon Reply Comments at 6, citing Michigan Bell, 323 F.3d at 361).

IV. ANALYSIS AND FINDINGS

Under Massachusetts law, the Department has the power of "general supervision and regulation of, and jurisdiction and control" over the "transmission of intelligence within the commonwealth by electricity, by means of telephone lines or telegraph lines or any other method or system of communication . . . ." G.L. c. 159, § 12. This jurisdiction extends to services "when furnished or rendered for public use within the commonwealth" by "common carriers." Id. The Department has jurisdiction over such intrastate telecommunications services, i.e., furnished within the commonwealth, to the full extent not preempted by federal law. See, e.g., Clarification of Wholesale Tariffing Requirements, Memorandum to Massachusetts Telecommunications Carriers and Interested Persons at 5 n.1 (Telecommunications Division, August 12, 2003) (reviewing jurisdiction over common carriers pursuant to G.L. c. 159, § 12).

We need not comment on Verizon's argument that the provision of PARTS and all network elements necessary to provide the service is primarily interstate for jurisdictional purposes, because the FCC has clearly asserted jurisdiction over packet switching network

elements. Triennial Review Order at ¶¶ 535-40.[10] The Department does not have jurisdiction to review whether the FCC has exceeded its statutory authority. Therefore, we will not disregard the FCC's assertion of jurisdiction merely because the question is pending before the courts, as the CLECs seem to urge us to do (see, e.g., AT&T Comments at 11 (arguing that the FCC's attempt to limit state unbundling authority "would be of no force or effect"); Covad Comments at 5 (suggesting that the FCC's interpretation of the Act is not entitled to deference under the Chevron doctrine[11]); MCI Reply Comments at 3 (arguing that the Department should "test the limits" of FCC preemption)). All of the commenters acknowledge, however, that even where the FCC asserts jurisdiction, the Department may continue to regulate, so long as the exercise of the Department's jurisdiction is "consistent" with the requirements of Section 251 and "does not substantially prevent implementation" of federal regulation. See 47 U.S.C. § 251(d)(3). The only question for the Department is whether the extent of FCC's regulation, as promulgated by the Triennial Review Order, preempts the Department's investigation of whether and on what terms Verizon may be obligated to provide access to PARTS.

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[10] We do not agree that Louisiana Public Service Commission supports AT&T's argument that the FCC cannot preempt the Department's regulation of PARTS because Section 152(b) of the act "fences off" intrastate facilities from FCC regulation absent an explicit grant of power to the FCC (AT&T Comments at 14). Section 201(b) "explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies," which includes Section 251. AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366, 380-83 (1999) (emphasis in original).

[11] Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984).

We are not convinced that the savings provision of Section 251(d)(3) would permit the Department to require PARTS to be unbundled in the face of the affirmative finding of fact by the FCC that competitors are not impaired without unbundled access to packet switching. The CLECs have not explained how a Massachusetts unbundling requirement for packet switching would not substantially prevent implementation of the FCC's regulations.[12] Similarly, AT&T has not demonstrated how an unbundling rule that goes beyond what AT&T asserts are "minimum requirements" would be consistent with a rule providing that "[a]n incumbent LEC is not required to provide unbundled access to the packet switched features, functions and capabilities of its hybrid loops." 47 C.F.R. § 51.319(a)(2)(i).[13] State mandated unbundling of packet switching under Massachusetts law would not be "merely inconsistent" with the federal rules in their current form, but would be contrary to them. We also decline to "invite" Verizon to unbundle packet switching voluntarily as a condition of continuing to operate under alternative regulation, as MCI urges. Cf. Verizon Alternative Regulation, D.T.E. 01-31-Phase I (2002); D.T.E. 01-31-Phase II (2003). MCI has not identified any

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[12] We decline to follow Covad's suggestion that the Department should proceed because the FCC has stated that it would only be "unlikely" to refrain from preempting state regulation where the FCC has made an affirmative finding of no impairment (see Covad Reply Comments at 7). The converse is that the FCC would be "likely" to preempt Department action. Given our finding that the Department cannot unbundle PARTS consistent with the FCC's regulations, proceeding with this investigation would be administratively inefficient.

[13] We reject Covad's and AT&T's assertions that Michigan Bell supports the proposition that state regulations may differ from the terms of the Act so long as the regulations "do not interfere with the ability of new entrants to obtain services." See Michigan Bell, 323 F.3d at 359. The holding of that case was merely that the state tariff in question did not frustrate the purposes of the Act. Id. at 360-61.

rationale under D.T.E. 01-31 to demonstrate why pricing flexibility for retail services should be linked to the availability of packet switching, where the FCC has determined that there are no barriers to the deployment of packet switching facilities that would render market entry uneconomic. See Triennial Review Order at ¶ 539.

While the Triennial Review Order delegates to state commissions the task of making findings regarding other network elements, such as local circuit switching, it does not delegate such a review of packet switching. Even if Massachusetts-specific economic or operational market factors would support a local finding of impairment without unbundled access to packet switching, as AT&T and Covad argue, the Triennial Review Order does not create a procedure for the Department to investigate these factors in order to establish local impairment. Cf. Triennial Review Order at ¶¶ 455, 527 (permitting states to establish the existence or nonexistence of local impairment for enterprise and mass market local switching). The proper route is for the CLECs to seek a waiver from the FCC of its packet switching rules based on those alleged Massachusetts-specific market factors. See 47 C.F.R. § 1.3.

Finally, if Verizon is obligated to offer access to packet switching under Section 271 at "just and reasonable" rates under Sections 201 and 202, the FCC, not the Department, has authority to enforce that obligation under Section 271. 47 U.S.C. § 271(d)(6). The proper forum for enforcing Verizon's Section 271 unbundling obligations is before the FCC. Id.

Therefore, for all the reasons discussed above, we conclude that the FCC's Triennial Review Order precludes further Department review of Verizon's PARTS unbundled packet

switching offering. As such, we deem it unnecessary to rule separately on Verizon's appeal of the October 18, 2002 Hearing Officer Ruling in this proceeding.

V. ORDER

After due notice, hearing, and consideration, it is

ORDERED that the Department's review of Verizon's PARTS packet switching offering is DISMISSED.

By Order of the Department,

/s
Paul G. Afonso, Chairman

/s
James Connelly, Commissioner

/s
W. Robert Keating, Commissioner

/s
Eugene J. Sullivan, Jr., Commissioner

/s
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order, or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order, or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order, or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5 Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).